

**# 26029**

**Kings Pointe Marina, LLC**

**Development Agreement**

# **Additional Information added to File # 26029**

**End of Additional Information**  
**File # 26029**

# King's Pointe Residences and Marina



Application  
Major Conditional Use  
Development Agreement  
Inter – Local Agreement

March 2006



*The Craig Company*

## Appendix 7

### Development Agreement

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**DEVELOPMENT AGREEMENT**  
**KING'S POINTE MARINA AND RESORT**  
**MONROE COUNTY, FLORIDA**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the County of Monroe ("County "), a subdivision of the state of Florida, The Florida Department of Community Affairs ("DCA") and King's Pointe Marina LLC ("KPM"), a Florida limited liability corporation, pursuant to Sections 9.5-101 and 9.5-102 of the Code of Ordinances for the County of Monroe, the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2002), Sections 308.032(3) and 380.0552 Florida Statutes (2004) , and is binding on the Effective Date set forth herein.

WITNESSETH:

WHEREAS, KPM is the owner of real property in Monroe County, Florida, located within County at the intersection of Maloney Avenue and Peninsular Avenue on Stock Island, consisting of three parcels with approximately 9.46 acres of uplands (the "Marina Parcel") as more particularly described in the boundary survey attached hereto as Exhibit A and incorporated by reference; and

WHEREAS, principals of KPM are also the owners of real property in Monroe County, Florida, located within County at approximately mile marker 20 on the Oceanside/South side of U.S. 1, commonly known as the Lazy Lakes Campground, consisting of one parcel with a total of approximately 12.55 acres of uplands, developed with 50 mobile homes and 50 recreational vehicles sites, all of which represent ROGO exemptions and the parcels are more particularly described in the boundary survey attached hereto as Exhibit B and incorporated by reference; and

WHEREAS, in numerous ordinances adopted over the past year or two, County has expressed its desire to encourage development and redevelopment of marinas in the County when that redevelopment increases or maintains access to water and waterfront areas, enhances the economy of the County for the benefit of its residents, improve the good appearance of the County, enhance the County's ability to support needed improvements in infrastructure, encourage the provision of needed affordable housing and encourage other redevelopment efforts for the economic growth, prosperity and welfare of the residents of County; and

WHEREAS, the County at every opportunity has encouraged the provision of affordable housing by changing the land development regulations, and entering into development agreements to provide incentives for the private development of affordable housing and also pursued opportunities for creating public-private partnerships to create such housing; and

WHEREAS, the Oceanside marina, now King's Pointe Marina, has been a landmark marina in the County for more than 40 years; and

WHEREAS, the KPM employs a number of persons who reside in County, is an integral part of the economy of County and the Stock Island, attracts tourism to County and the Stock Island; and

WHEREAS, redevelopment of King's Pointe Marina will further the County's policy of encouraging redevelopment of marinas in a manner consistent with protecting this vital part of the economy in the County; and

WHEREAS, the present King's Pointe Marina development consists of 158 dry slips, 22 condo units, 96 wet slips and associated commercial development including restaurant, lounge and ship's store; and

WHEREAS, KPM further desires to upgrade and improve the King's Pointe Marina

Property by, addressing storm-water runoff, providing for employee/affordable housing in another location, upgrading marina pump-out facilities to meet current standards, and bringing the development on the Property into compliance with setback, open space, buffer yard, and other similar requirements in the County's LDRs; and

WHEREAS, principals of KPM also own property known as the Jabour property in the City of Key West from which both the City of Key West and FDCA recognize that there are at least 48 transferable development rights which may be used for market rate units in the community; and

WHEREAS, the development described in the preceding recitals, including the transferable units located in the City of Key West, was in existence at the time of the 1990 Census, which formed the basis of the County's dwelling unit allocation ordinance, also known as Residential ROGO (herein "ROGO"), codified at Sections 9.5-121 through 9.5-129 of the County Code; and

WHEREAS, the King's Pointe Marina units are recognized by ROGO, are exempt from the requirement to obtain ROGO allocations in order to be redeveloped, and therefore are entitled to ROGO exemptions under Section 9.5-120.4(d) of the County Code, in that redevelopment or replacement of the units does not increase the hurricane evacuation times for residential units in the County; and

WHEREAS, the redevelopment of the King's Pointe Marina Property authorized by this Agreement recognizes the ROGO exemptions attributable to the 32 of the 48 units in the City of Key West and authorizes a transfer of density and a transfer of ROGO exemptions or development rights to the King's Pointe site; and

WHEREAS, the King's Pointe Marina Property is presently zoned Mixed Use (MU); and



WHEREAS, the upland land area on the King's Pointe Property is sufficient to meet the density and intensity requirements in the County Code for all development approved in this Agreement; and

WHEREAS, KPM has been working with County on a development agreement that would allow the redevelopment of the King's Pointe Marina Property as provided in this Agreement; and

WHEREAS, KPM has provided public notice of the parties' intent to consider entering into this Agreement by advertisement published in a newspaper of general circulation and readership in County, posting the King's Pointe Marina Property subject to this Agreement, and mailed notice to the persons and entities shown on the most recent Monroe County Tax Roll to be the owners of property lying within 300 feet of the boundaries of the King's Pointe Marina Property subject to this Agreement; and

WHEREAS, the County Planning Commission held an advertised public hearing on \_\_\_\_\_, 2006, to consider this Agreement, and recommended \_\_\_\_\_ approval of the Agreement to the County Commission; and

WHEREAS, the County Commissioners of Monroe County held an advertised public hearing on \_\_\_\_\_, 2006 to consider this Agreement and the recommendation of the Planning Commission, and to accept and encourage public input with respect to the proposal of KPM contained in this Agreement, and has considered the Planning Commission recommendation, the County staff report, and public input; and

WHEREAS, the County Commissioners of Monroe County has determined that this Agreement is in the public interest, is consistent with its policy to encourage the redevelopment of marinas in County consistent with maintaining water access, and will further the health, safety

and welfare of the residents of County.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**I. RECITALS.** The foregoing Recitals are a part of this Agreement on which the parties have relied and are incorporated into this Agreement by reference.

**II. PURPOSES OF AGREEMENT.**

The purposes of this Agreement are as follows:

A. To authorize the redevelopment of the King's Pointe Marina Property consistent with the County's land development regulations, and Future Land Use Element Policy 101.4.23 (recognition of legally established units) and Policy 601.1.5 encouraging private initiatives for the provision of affordable housing; and

B. To recognize ROGO exemptions attributable to 32 multi family units owned by KPM attributable to the Jabour Property in the City of Key West; and

C. To allow redevelopment of 32 units on the Marina Parcel and to authorize the provision of affordable/employee housing utilizing 45 ROGO exemptions from ROGO-exempt existing upland units on the Lazy Lakes Property to be constructed by KPM within a period of three (3) years of the effective date of this agreement; and

D. To allow the transfer and redevelopment of 55 market rate units from the Lazy Lakes elsewhere from the ROGO exempt existing upland units on the Lazy Lakes Property; and

D. To facilitate the permanent removal of at-risk RV units on the Lazy Lakes Property and development of ROGO-exempt units on suitable uplands in structures that meet

wind load standards for tropical storms and hurricanes; and

E. To secure the ability for KPM to further lessen the environmental impacts of the development on the Property by connecting to the Stock Island wastewater facility, appropriately addressing stormwater runoff, upgrading marina pump-out facilities, and bringing the development on the Property into compliance with setback, open space, buffer yard and other applicable LDRs.

### III. DEFINITIONS.

For the purposes of this Agreement, the following terms shall have the following definitions:

*Affordable Housing* shall mean housing as defined in Sections 9.5-4(A-5) and 9.5-266 of the County, restricted to use as affordable housing for persons or households meeting the income criteria described in the regulations for a period of fifty (50) years, renewable by County for two successive periods of fifty (50) years each. One or more such restrictive covenants shall be recorded in the public records of Monroe County, Florida, by the Owner, at its sole expense, prior to issuance of a certificate of occupancy for each unit to which the recorded restriction applies, with copies of the recorded restriction(s) provided to County and to the state land planning agency within a reasonable time after recordation.

*Agreement* shall refer to this Development Agreement, as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3220 and 308.032(3), et. Seq., Florida Statutes.

*Annual Report* shall refer to the report filed by KPM with County and (as and when applicable) the state land-planning agency.

*County Code* or *LDRs* shall refer to the land development regulations in the Code of

Ordinances of the County of County.

*Comprehensive Plan* shall refer to County' s Comprehensive Plan,

*Development* shall refer to the development of the King's Pointe or Lazy Lakes Property for uses permitted by the Comprehensive Plan and the County Code, subject to the conditions, obligations, restrictions and terms contained in this Agreement.

*Effective Date* shall refer to the date this Agreement becomes effective, as set forth herein.

*King's Pointe or Lazy Lakes* shall refer to one or more of the parcels of real property located in County that are subject to this Agreement.

*Public Facilities* shall refer to those facilities that are specifically described in Section 163.3221, Florida Statutes, and as set forth in this Agreement.

*State land planning agency* shall refer to the State of Florida Department of Community Affairs, or any successor agency.

*Vacation Rental Use* shall refer to uses allowed by sections 9.5-534 Monroe County Code.

*2010 wastewater standards* means the best available treatment standards established by Laws of Florida 99-395 for onsite sewage treatment and disposal systems, codified in Section 381.0065, Florida Statutes.

#### **IV. STATUTORY AND CODE REQUIREMENTS.**

The parties recognize the binding effect of the Florida Local Government Development Agreement Act, Sections 163.3221, *et seq.*, and 380.032(3) and 380.0552(2004) Florida Statutes, as to the form and content of this Agreement and in accordance therewith set forth and agree to the following:

**A. Legal Description and Ownership.**

KPM is the sole owner of the King's Pointe Marina Property that is subject to this Agreement, as described in the Boundary Survey prepared by Fred Hildebrandt LS drawing 02-207 attached hereto as Exhibit A.

**B. Duration of Agreement.**

This Agreement shall remain in effect for ten (10) years from its effective date as defined herein.

**C. Existing Development.**

Existing development on the King's Pointe Marina Property is identified on the survey attached hereto as Exhibits A and incorporated herein by reference.

**D. Permitted Uses; Affordable Housing; Transfer of Units from the City of Key West**

1. The development permitted on the King's Pointe Marina shall consist of those uses set forth herein, as identified on the Conceptual Site Plans attached hereto and incorporated by reference.

2. KPM or a related third party shall develop forty five (45) affordable/employee housing units on the Lazy Lakes parcels. KPM shall obtain certificates of occupancy for the affordable/employee housing units prior to or concurrently with construction and issuance of certificates of occupancy for the last unit authorized by this Agreement at King's Pointe Marina. KPM or a related third party shall execute one or more deed restrictions restricting the use of the affordable units to use as affordable housing for a period of fifty (50) years, renewable by County for two (2) additional fifty (50) year periods, and record same in the public records of Monroe County, Florida, at the Owner's sole expense, prior to issuance of a certificate of

occupancy for each unit to which the recorded restriction applies. Copies of the recorded restriction(s) shall be provided to the County and to the state land-planning agency within a reasonable time after recordation.

3. All residential units developed on the King's Pointe Marina Property under this Development Agreement may be used as transient residential units as defined in this Agreement, but the owners of individual units in the homeowner's association or condominium may maintain a permanent residence at a unit on the King's Pointe Property.

4. For the duration of this Agreement, the parties agree that any and all of the approved development shall adhere to, conform to, and be controlled by this Agreement, the exhibits attached hereto and incorporated by reference, the County Land Development Regulations and the Comprehensive Plan governing the development of the King's Pointe Property on the effective date of this Agreement. In the event that all or a portion of the existing or authorized development subject to this Agreement should be destroyed by storm, fire, or other common disaster, KPM, its grantees, successors, or assigns shall have the absolute right to rebuild or repair the affected structure(s) and reinitiate the prior approved use so long as such development is in compliance with this Agreement.

5. The following exhibits are attached hereto and incorporated by reference:

Exhibit A Boundary survey prepared by Fred Hildebrandt L drawing 02 -207,

Exhibit B Site survey of Lazy Lakes property by Keith and Schnars PA,  
Project 15943C, Field book 978/28-39.

Exhibit C Conceptual Site Plans March 29, 2006 Conceptual Site Plan sheets  
S-1 through S-5 and sheet L-1

KPM shall not be bound by this Agreement to the building layout depicted (for illustrative purposes only) on the attached Conceptual Site Plans. Final Site Plans shall be configured as otherwise set forth herein and as permitted by the County LDRs, provided the densities and intensities set forth in this Agreement are met.

6. Applicable Density, Intensity and Building Heights. Density and intensity shall be as provided in this Agreement. Maximum building height shall be thirty-five (35) feet.

7. The thirty two (32) residential units to be established on the site are derived from 32 ROGO exempt units owned by principals of KPM which are recognized by the City of Key West and Monroe County and are subject to use on the King's Pointe property as enabled by a separate inter-local agreement between the City and the County

**F. Public Facilities;**

1. The Florida Keys Aqueduct Authority provides domestic potable water.
2. Electric service is provided by the Florida Keys Electric Co-Op.
3. Solid waste service is provided by County Garbage Service.
4. King's Pointe Marina shall provide wastewater and sewage collection and disposal by connection to the Stock Island Wastewater collection and treatment system at the time of building permit application.

6. Educational Facilities. The resort and commercial development of the King's Pointe Marina Property, as contemplated by this Agreement, does not impact upon educational facilities. The King's Pointe Marina Property is currently served by the following schools, operated by the Monroe County School Board: Key West County High School, Glynn Archer Middle School and Gerald Adams Elementary School.

7. Recreational Facilities. The King's Pointe Marina Property includes recreational facilities for owners and guests of King's Pointe Marina, including swimming and boating opportunities. Therefore, redevelopment of the Property will have no impact on public

recreation facilities.

8. Any increased impacts on public facilities or public services attributable to each unit of the development, and the cost of capital improvements to meet the associated demand on such facilities or services, shall be assured by payment to County, concurrent with the issuance of the building permits for each unit, of any County impact fees required by Ordinance then in effect, as well as by payment by KPM of any applicable utility system development fees

**G. Local Development Permits.**

1. The following is a list of all development permits approved or needed to be approved for the development of the property as specified and requested in this Agreement:

- a. This Development Agreement;
- b. Major Conditional Use approval or amendment of the existing Major Conditional Use approval;
- c. The final site plan, landscape plan, drainage plan, building elevations and floor plans;
- d. Building and related construction permits for all main and accessory structures, land clearing, and landscaping. At any time any building permit is applied for, KPM shall demonstrate compliance with all applicable federal, state and municipal disabled-access regulations in effect at the time of application;
- e. Federal, state, regional, and local permits for storm-water runoff and dredge and fill activities, when necessary and if required.
- f. Inter- local agreement between the City of Key West and Monroe County for the transfer of 32 residential units (ROGO exemptions) from the City to the County.

2. Nothing in this Agreement shall preclude the parties from applying additional



conditions, by mutual agreement, during final site plan review or permitting.

**H. Finding of Consistency.**

By entering into this Agreement, County and DCA find that the development permitted or proposed herein is consistent with and furthers the Comprehensive Plan (as defined herein), applicable LDRs and the Principles for Guiding Development for the Florida Keys Area of Critical State Concern set forth at Section 380.0552(7), Florida Statutes.

**I. Reservations or Dedications of Land for Public Purposes.**

The parties anticipate that KPM may reserve or dedicate land for public purposes in connection with the development authorized by this Agreement, but are currently unaware of the specifics of such reservation(s) or dedication(s). Reservations and dedications for public purposes in connection with this Agreement will be as required by County's Comprehensive Plan and County Code. Such reservations or dedications may include, by way of example, easements necessary for the provision of stormwater, utility, and wastewater services to the Property.

**J. Mutual Cooperation.** County and KPM agree to cooperate fully with and assist each other in the performance of the provisions of this Agreement.

**K. Development to Comply with Permits and County Comprehensive Plan and Code Provisions.** The development described in and authorized by this Agreement shall be developed in accordance with all required permits, and in accordance with all applicable provisions of the County's Comprehensive Plan and County Code in effect on the date of execution of this Agreement. No certificate of occupancy for an individual building shall be issued until all plans for that building are approved by County and KPM has complied with all conditions in permits issued by County and other regulatory entities for that building.

**L. Compliance With Permits, Terms, Conditions, and Restrictions Not Identified Herein.** The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve KPM of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

**M. Laws Governing.**

a. For the duration of this Agreement, all approved development of King's Pointe Marina shall comply with and be controlled by this Agreement and provisions of the County's Comprehensive Plan and County Code in effect on the date of execution of this Agreement, inclusive of text changes and rezoning approved by the County Commission on the date of County's approval of this Agreement, if any. The parties do not anticipate that County will apply subsequently adopted laws and policies to King's Pointe, except as expressly provided in this Agreement.

b. Pursuant to Section 163.3233, Florida Statutes, County may apply subsequently adopted laws and policies to King's Pointe Marina only if County holds a public hearing and determines that: (a) the new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities set forth in this Agreement; (b) the new laws and policies are essential to the public health, safety, or welfare, and County expressly states that they shall apply to the development that is subject to this Agreement; (c) County demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or (d) the Agreement is based on substantially inaccurate information supplied by KPM. However, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to King's Pointe.

c. If state or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, it shall be modified as is necessary to comply with the relevant state or federal laws. However, this Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common law.

**N. Amendment, Renewal, and Termination.** This Agreement may be amended, renewed, or terminated as follows:

a. As provided in Section 163.3237, Florida Statutes, this Agreement may be amended by mutual consent of the parties to this Agreement or by their successors in interest. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.

b. As provided in Section 163.3229, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirements in Section 163.3225, Florida Statutes and applicable LDRs: the County shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option County. Notice of intent to consider renewal of the Agreement shall be advertised approximately seven (7) days before each public hearing in a newspaper of general circulation and readership in County, and shall be mailed to all affected property owners before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Agreement; the development uses on King's Pointe, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

c. This Agreement may be terminated by KPM or its successor(s) in interest following a breach of this Agreement upon written notice to County as provided in this

Agreement.

d. Pursuant to Section 163.3235, Florida Statutes, this Agreement may be revoked by County if, on the basis of competent substantial evidence, there has been a failure by KPM to comply with the terms of this Agreement.

e. This Agreement may be terminated by mutual consent of the parties.

**O. Breach of Agreement and Cure Provisions.**

a. If County concludes that there has been a material breach in this Agreement by KPM, prior to revoking this Agreement, County shall serve written notice on KPM identifying the term or condition County contends has been materially breached and providing KPM with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of KPM, shall be considered a material breach of this Agreement: (1) failure to comply with the provisions of this Agreement; and (2) failure to comply with terms and conditions of permits issued by County or other regulatory entity for the development authorized by this Agreement.

b. If KPM concludes that there has been a material breach in the terms and conditions of this Agreement by County, KPM shall serve written notice on County identifying the term or condition the KPM contends has been materially breached and providing County with thirty (30) days from the date of receipt of the notice to cure the breach. The following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of County, shall be considered a material breach of this Agreement: failure to comply with the provisions of this Agreement; failure to timely process any application for site plan approval or other development approval required to be issued by County for the development/redevelopment

authorized by this Agreement.

c. If a material breach in this Agreement occurs and is not cured within the time periods provided above, the party that provided notice of the breach may elect to terminate this Agreement or may seek to enforce this Agreement as provided herein.

d. If either party waives a material breach in this Agreement, such a waiver shall not be deemed a waiver of any subsequent breach.

**P. Notices.** All notices, demands, requests, or replies provided for or permitted by this Agreement, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

TO KPM:

Mr. Everett Atwell  
KPM LLC  
1115 Marbella Plaza Drive  
Tampa, Florida 33619  
Telephone: (813) 663 0401

With a copy by regular U.S. Mail to:

Mr. Timothy Koenig, Esquire  
Feldman, Koenig and Highsmith, P.A.  
3158 Northside Drive  
Key West, Florida 33040  
Telephone: (305) 296-8851

TO County:

Thomas J. Willi, County Administrator  
County of Monroe  
1100 Simonton Street  
Key West, Florida 33040  
Telephone: (305) 292-4441

With a copy by regular U.S. Mail to:

Suzanne Hutton, Esquire  
Acting County Attorney  
502 Whitehead Street, 3<sup>rd</sup> floor  
Key West, Florida 33040  
Telephone: (305) 292 3470

**Q. Annual Report.** On the anniversary date of the Effective Date of this Agreement, KPM shall provide County with a report identifying (a) the amount of development authorized by this Agreement that has been completed, (b) the amount of development authorized by this Agreement that remains to be completed, and (c) any changes to the plan of development that have occurred during the one (1) year period from the Effective Date of this Agreement or from the date of the last annual report.

**R. Enforcement.** In accordance with Section 163.3243, Florida Statutes, any party to this Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes, or the State Land Planning Agency may file an action for injunctive relief in the circuit court of Monroe County, Florida, to enforce the terms of this Agreement or to challenge the compliance of this Agreement with the provisions of Sections 163.3220-163.3243, Florida Statutes.

**S. Binding Effect.** This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives.

**T. Assignment.** This Agreement may not be assigned without the written consent of

the parties.

U. **Severability.** In the event any provision, paragraph or section of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.

V. **Applicable Law.** This Agreement was drafted and delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida.

W. **Litigation; Attorney's Fees; Venue; Waiver of Right to Jury Trial.** As between County and KPM, in the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorney's fees. This includes, but is not limited to, reimbursement for such reasonable attorneys' fees and costs incurred with respect to any appellate, bankruptcy, post-judgment, or trial proceedings related to this Agreement. Venue for any legal proceeding arising out of this Agreement shall be in Monroe County, Florida. The parties to this Agreement waive the right to a jury trial in any litigation arising out of or initiated under this Agreement.

X. **Use of Singular and Plural.** Where the context requires, the singular includes the plural, and the plural includes the singular.

Y. **Duplicate Originals; Counterparts.** This Agreement may be executed in any number of originals and in counterparts, all of which evidence one Agreement. Only one original is required to be produced for any purpose.

Z. **Headings.** The headings contained in this Agreement are for identification purposes only and shall not be construed to amend, modify, or alter the terms of the

Agreement.

AA. **Entirety of Agreement.** This Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, Agreements, or understandings regarding the matters contained herein. The parties agree that there are no commitments, Agreements, or understandings concerning the subjects covered by this Agreement that are not contained in or incorporated into this document and, accordingly, no deviation from the terms hereof shall be predicated upon any prior representations or Agreements, whether written or oral. This Agreement contains the entire and exclusive understanding and Agreement among the parties and may not be modified in any manner except by an instrument in writing signed by the parties.

BB. **Recording; Effective Date.** KPM shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of this Agreement. A copy of the recorded Agreement showing the date, page and book where recorded shall be submitted to the State Land Planning Agency by hand delivery, registered or certified United States mail, or by a delivery service that provides a signed receipt showing the date of delivery, within fourteen (14) days after the Agreement is recorded. KPM shall also provide a copy of the recorded Agreement to County within the same time period. This Agreement shall become effective thirty (30) days after the date it is recorded in the public records of Monroe County, Florida, and received by the State Land Planning Agency.

CC. **Date of Agreement.** The date of this Agreement is the date the last party signs and acknowledges this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below written. Signed, sealed, and delivered in the presence of:

KPM, Ltd., a Florida Limited Liability Corporation

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King's Pointe Marina Development Agreement



\_\_\_\_\_, 2005

By \_\_\_\_\_  
EVERETT ATWELL

Signed, sealed, and delivered in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Witness (printed or typed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Witness (printed or typed)

STATE OF FLORIDA       )  
County OF MONROE       )

The foregoing Agreement was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_  
2005, by EVERETT ATWELL, and the respective witnesses,  
\_\_\_\_\_ and \_\_\_\_\_, who are  
either personally known to me or produced Florida drivers licenses as identification.

\_\_\_\_\_(SEAL)  
Notary Public

\_\_\_\_\_  
Name (typed, printed or stamped)  
My commission expires:

On the \_\_\_\_\_ day of \_\_\_\_\_ 2006, the County Council of the County of County  
approved this Agreement by Resolution No. \_\_\_\_\_

County OF County

By \_\_\_\_\_  
Charles McCoy, MAYOR

ATTEST:

\_\_\_\_\_  
Danny Kolhage, County Clerk

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:

\_\_\_\_\_  
Suzanne Hutton.  
County Attorney